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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,510	12/20/2000	Lothar Wenzel	5150-48000	8437

7590

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Jeffrey C. Hood
Meyertons, Hood, Kivlin, Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767-0398

EXAMINER

VU, KIEU D

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 02/06/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,510

Applicant(s)

WENZEL ET AL.

Examiner

Kieu D Vu

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/28/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 11-18, 20-25, 30-33, 37-40, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by McDonald et al ""McDonald", USP 5966532).

Regarding claims 1, 30 and 38, McDonald teaches a method for programmatically generating a second graphical program based on a first graphical program comprising receiving information specifying the first graphical program (col 4, lines 11-12), programmatically generating the second graphical program based on the information and the second graphical program implements functionality of the first graphical program (col 4, lines 3-9; col 5, lines 1-12).

Regarding claims 2 and 31, McDonald teaches that second graphical program performs substantially like the first graphical program (col 4, lines 7-10).

Regarding claims 3, 32, and 39, McDonald teaches the first graphical program and the second graphical program implements the first functionality (objects or controls).

Regarding claims 4 and 40, McDonald teaches second graphical program implements only a portion of functionality of the first graphical program (col 3, lines 66-67).

Regarding claims 11-12, 37, and 44, McDonald teaches that first graphical program and the second graphical program are associated with different programming development environment (col 10, lines 3-10).

Regarding claim 13, McDonald teaches a first programming language and the second programming language (col 2, lines 25-29).

Regarding claim 14, McDonald teaches the first graphical programming language is the G language (col 3, lines 65-66).

Regarding claim 15, McDonald teaches the second graphical programming language is the G language (col 3, lines 65-66).

Regarding claim 16, McDonald teaches a data flow program (col 20, line 11-12).

Regarding claims 17-18, McDonald teaches the compiling and executing the second graphical program (col 4, lines 3-80).

Regarding claims 20-21, McDonald teaches that the first graphical program and the second graphical program are LabVIEW program (col 9, line 63).

Regarding claims 22-23, McDonald teaches that information specifying the first graphical program comprises text information and abstract information (col 13, lines 22-28).

Regarding claim 24, McDonald teaches that information specifying the first graphical program comprises file (col 19, lines 66-67).

Regarding claim 25, McDonald teaches the creating the second graphical program based on the determined representation (col 5, lines 12-22).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-10, 26-29, 34-36, and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald and Sojoodi et al ("Sojoodi", USP 6437805).

Regarding claims 5, 34, and 41, McDonald teaches does not teach the graphical program includes interconnected nodes. However, such feature is known in the art as taught by Sojoodi. Sojoodi teaches a system for accessing object capabilities in a graphical program which comprises arranging and connecting plurality of nodes in a graphical program (col 5, lines 40-47). It would have been obvious to one of ordinary skill in the art, having the teaching of McDonald and Sojoodi before him at the time the invention was made, to modify the graphical program taught by McDonald to include interconnected nodes taught by Sojoodi with the motivation being to enhance the visualization of the program.

Regarding claim 6, Sojoodi teaches that interconnected nodes visually indicate the first functionality of the second graphical program (col 5, lines 41-47).

Regarding claims 7, 35, and 42, Sojoodi teaches that interconnected nodes are interconnected according to data flow (col 5, lines 46-47).

Regarding claims 8-10, 36, and 43, McDonald teaches the comprising block diagram (step 266 in Fig. 5) and graphical user interface (col 4, lines 62-64).

Regarding claim 26, Sojoodi teaches the comprising constructing a directed graph representation of the graphical program (col 5, lines 41-45).

Regarding claim 27, McDonald teaches the comprising data structures (col 16, lines 38-40).

Regarding claim 28, McDonald teaches the receiving information specifying the nodes (col 5, lines 63-65).

Regarding claim 29, McDonald teaches that nodes have particular functionality (col 5, lines 48-52).

5. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald and Kadtke et al ("Kadtke", USP 6401057).

Regarding claim 19, McDonald does not teach the Simulink program. However, such feature is known in the art as taught by Kadtke. Kadtke teaches a data classification system which comprises the use of Simulink package (col 6, lines 6-8). It would have been obvious to one of ordinary skill in the art, having the teaching of McDonald and Kadtke before him at the time the invention was made, to modify the graphical program taught by McDonald to include the use of Simulink program taught by Kadtke with the motivation being to apply the system in different programs.

6. Applicant's arguments filed 11/28/03 have been fully considered but they are not persuasive.

In response to Applicant's argument that "In other words, the graphical program or graphical program portion is generated or assembled from selected pre-existing

controls and graphical code portions or templates, and is specifically not a second graphical program generated based in received information specifying a first graphical program", it is noted that such is not quite the case.

"Code", according to the Microsoft Press Computer Dictionary Third Edition, is program instruction. Since McDonald teaches graphical code (graphical code portion), it is clear that McDonald teaches graphical program instruction or graphical program.

Therefore, in a reasonable interpretation, McDonald teaches the receiving information specifying the first graphical program (select a graphical code portion in lines 54-56 col 4), based on the information (configured graphical code portion in lines 9-10 col 5) generate the second graphical program (the graphical program is being created in lines 11-12 col 5), the second graphical program implements functionality of the first graphical program (since the graphical program included graphical code portion).

In response to Applicant's argument that "Sojoodi neither teaches or suggests the limitations of claims 1 (or claims 30 and 38). Nor does Sojoodi in combination with McDonald teach or suggest these limitations", it is noted that as clearly presented above, McDonald anticipates claims 1, 30, and 38, therefore, there is no need to combine McDonald with Sojoodi to reject claims 1, 30, and 38.

Similarly, since McDonald anticipates claims 1, 30, and 38, there is no need to combine McDonald with Kadtke to reject claims 1, 30, and 38, therefore, Applicant's argument "even if the Kadtke's use of Simulink package is combined with the system of

McDonald, the combination would not produce all of the features of independent claims 1, 30, and 38" is not persuasive.

In response to Applicant's invention that "Nowhere does Kadtke or McDonald) teaches or suggest combining the Simulink package with the system of McDonald to produce Applicant's invention, it is noted that, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art, having the teaching of McDonald and Kadtke before him at the time the invention was made, to modify the graphical program taught by McDonald to include the use of Simulink program taught by Kadtke with the motivation being to apply the system in different programs.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu whose telephone number is (703-605-1232). The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (703- 308-3116).

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703)-872-9306

and / or:

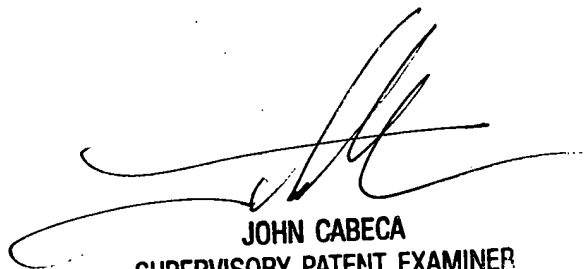
(703)-746-5639 (use this FAX #, only after approval by Examiner, for

"INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703-305-3900).

Kieu D. Vu

01/28/04



JOHN CABECA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100